

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
HELENA DIVISION**

AARON COLLINS  
ADC #111257

PLAINTIFF

V.

NO: 2:05CV00247 JLH/HDY

PATRICK BELL

DEFENDANT

**FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Court Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite 402  
Little Rock, AR 72201-3325

#### **DISPOSITION**

Plaintiff filed this complaint pursuant to 42 U.S.C. § 1983, and service was ordered. After service on Defendant was initially unsuccessful, the Court appointed an attorney, Malcolm Culpepper, for the sole purpose of assisting Plaintiff in obtaining service. Mr. Culpepper was unsuccessful in his efforts to obtain service upon Defendant, despite hiring a process server. According to Mr. Culpepper's latest report to the Court (docket entry #20), Defendant's whereabouts are unascertainable for purposes of service.

After receiving Mr. Culpepper's report, the Court entered an order directing Plaintiff to provide, no later than 30 days after the order's entry date, an address at which Defendant could be served (docket entry #21). Plaintiff was warned that his failure to provide such an address would result in the recommended dismissal of his complaint. Although more than 30 days has passed, Plaintiff has not provided an address at which Defendant may be served, or otherwise responded to the order. Under these circumstances, the Court concludes that Plaintiff's complaint should be

dismissed without prejudice for failure to comply with Local Rule 5.5(c)(2). *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE RECOMMENDED THAT:

1. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE.
2. The Court certify that an *in forma pauperis* appeal taken from the order and judgment dismissing this action be considered frivolous and not in good faith.

DATED this 27 day of February, 2007.



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UNITED STATES MAGISTRATE JUDGE